UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-25814-GAYLES

ANZOR MATSEV,

Petitioner,

v.

KROME SERVICE PROCESSING CENTER, WARDEN, *et al.*

Respondents.
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents by and through the undersigned Assistant United States Attorney hereby file their Response to Order to Show Cause [DE 12] as to why the Amended Petition for Writ of Habeas Corpus under 28 U.S.C.§ 2241 [DE 11] ("Amended Petition") should not be granted and state in support thereof as follows:

I. INTRODUCTION

Petitioner, Anzor Matsev ("Petitioner") is subject to a final order of removal and argues in the Amended Petition that his detention in relation thereto is unlawful as his removal is not reasonably foreseeable under *Zadvydas v. Davis*, 533 U.S. 678 (2001). [DE 11, p. 1]. Petitioner further contends that his detention is a violation of the Fifth Amendment due process clause. *Id.* Petitioner also filed a Memorandum of Law [DE 16] in support of the Amended Petition asserting that the Court must set aside agency actions which are arbitrary, capricious, an abuse of discretion, or otherwise contrary to the law under the Administrative Procedure Act, and essentially removal to his country of origin – Russia – is a geopolitical impossibility. [DE 16, p. 2-3, 5].

However, Respondents maintain that Petitioner's detention is lawful pursuant to 8 U.S.C. § 1231; removal to Russia is significantly likely to occur in the reasonably foreseeable future; and a travel document request is pending. Accordingly, the Amended Petition should be denied.

II. FACTUAL AND PROCEDURAL HISTORY

Petitioner is a citizen and national of Russia. *See* Ex. 1, Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), dated October 10, 2025. On or about May 31, 2007, Petitioner was admitted as a J-1 nonimmigrant, at New York, NY, with authorization to remain in the United States until September 29, 2007. *Id*; Ex. 2, Form I-862, Notice to Appear (NTA), dated August 16, 2010. Petitioner remained in the United States beyond the time authorized by law. *See* Ex. 2.

On August 16, 2010, Petitioner was issued an NTA placing him in Immigration and Nationality Act (INA) § 240 [8 U.S.C. § 1229a] removal proceedings and charging him as subject to removal from the United States pursuant to INA § 237(a)(1)(B) [8 U.S.C. § 1227(a)(1)(B)] as an alien that after admission as a nonimmigrant under Section 101(a)(15) of the Act, has remained in the United States for a time longer than permitted. *Id.* On November 21, 2017, Petitioner's application for relief was denied at the Miami Immigration Court and he was ordered removed to Russia. *See* Ex. 3, Order of the Immigration Judge, dated November 17, 2017. Petitioner appealed the decision to the Board of Immigration Appeals (BIA), and the appeal was dismissed on July 31, 2019, making his removal order administratively final. *See* Ex. 4, BIA Decision, dated July 31, 2019.

On October 10, 2025, Petitioner appeared at the Miami local office of the U.S. Citizenship and Immigration Services (USCIS), for an interview relating to his pending petition for alien relative (Form I-130) filed by his spouse. *See* Ex. 1, Form I-213. At that time, he was encountered

by the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), and taken into ICE ERO custody after ERO determined that Petitioner was amenable to removal from the United States pursuant to the July 31, 2019, final administrative removal order. *Id.*, *See* Ex. 5, Form I-205, Warrant of Removal/Deportation, dated October 10, 2025; Ex. 6, Declaration of Deportation Officer Jean Josil (Declaration), ¶ 12.

On October 23, 2025, Petitioner submitted a Form I-246, Application for a Stay of Deportation or Removal, to ICE. *See* Ex. 6, Declaration, ¶ 13. On or about November 7, 2025, the Application for Stay of Deportation was denied. *Id.*

Petitioner has received a custody review pursuant to 8 C.F.R. § 241.4. On January 7, 2026, Petitioner was served with the Notice to Alien of File Custody Review. *See* Ex. 6, Declaration, ¶ 14; Ex. 7, Notice to Alien of File Custody Review. On the same day, the Supervisory Detention and Deportation Officer concurred with the recommendation to continue detention. Ex. 6, Declaration, ¶ 14. On February 5, 2026, Petitioner was served with the Continued Detention Letter, advising him that he will remain in custody while his removal to Russia is effectuated. *See* Ex. 8, Continued Detention Letter. Petitioner did not request an interview at that time. *Id.*

Since October 28, 2025, Petitioner has been detained by ERO at the Krome North Service Processing Center (Krome) located in Miami, Florida, awaiting his removal from the United States. *See* Ex. E, Declaration, ¶ 15. A request for travel document has been made and is currently pending. *Id.* at ¶ 16.

III. ARGUMENT

A. Petitioner is Lawfully Detained pursuant to 8 U.S.C. § 1231 as there is a Final Order of Removal.

The Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510,

523 (2003) (emphasis added). The Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and, in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Section 1231(a) of Title 8—the post-removal detention provision of the INA – applies to aliens like Petitioner who are subject to a final order of removal. *See* 8 U.S.C. § 1231(a).

When an alien is ordered removed, the Attorney General must remove the alien from the country within 90 days. *See id.* § 1231(a)(1)(A). However, the Supreme Court has also acknowledged that not all removals can be effectuated within 90 days. In *Zadvydas*, it was stated:

> It is unlikely that Congress believed that all reasonably foreseeable removals could be accomplished in 90 days, but there is reason to believe that it doubted the constitutionality of more than six months' detention. Thus, for the sake of uniform administration in the federal courts, six months is the appropriate period. After the 6–month period, once an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must furnish evidence sufficient to rebut that showing.

533 U.S. at 699. To obtain relief from a post-removal order of detention, then, a petitioner must: (1) show that he's been detained for more than six months; and (2) establish that there's no significant likelihood of removal in the foreseeable future. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). To do so, Petitioner cannot merely rest on his own conclusory assertions—actual proof or evidence is needed. *Id.* at 1052. Where an alien cannot meet his burden of establishing that the evidence shows that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012).

B. Petitioner's *Zadvydas* claim is Premature.

The Supreme Court held in *Zadvydas* that an alien subject to a final removal order may be detained for "a period reasonably necessary to secure removal." 533 U.S. at 699. Such detention is "presumptively reasonable" for six months. *Id.* at 701. "This 6–month presumption . . . does not mean that every alien not removed must be released after six months." *Id.* Rather, an alien, such as Petitioner, "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Here, the Petitioner has been detained since October 10, 2025, less than the presumptively reasonable six-month period discussed in *Zadvydas*. *See* [DE 1, p. 1].

To the extent that Petitioner argues his previous detention in 2012 must be counted in the aggregate with his current detention as of October 10, 2025, the Court should reject same. *See* [DE 16, p. 2]. Courts have held that the six-month *Zadvydas* presumptively reasonable detention period restarts when a Petitioner is released for a lengthy period and then re-detained. *See Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, *4 (M.D. Ga. Mar. 14, 2018) (noting "a strong argument exists" that the removal period did not begin until the petitioner, who had previously been in ICE custody before serving a prison sentence, was returned to ICE custody). The *Meskini* court stated it did "not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past." *Id.* at *3. "Further, it is important to note the Supreme Court in *Zadvydas* recognized six months as a presumptively reasonable detention period to allow the Government to arrange for an alien's removal." *M.K. V. Stewart Detention Center*, Case No. 23-cv-136-CDL-MSH, DE 12 (M.D. Ga. Oct. 19, 2023) (citing *Zadvydas*, 533 U.S. at 700-01)). Likewise, Respondents should be afforded the opportunity to arrange for Petitioner's removal in this case.

Additionally, this Court similarly rejected such an argument in *Barrios v. Ripa*, Case No. 25-cv-22644-GAYLES, 2025 WL 2280485, *8 (S.D. Fla. Aug. 8, 2025). In *Barrios*, the Court stated "any subsequent period of detention, even one day, would raise constitutional concerns" and "adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General- effectuating removals" while also citing to 8 U.S.C. § 1252(g). Section 1252(g) states as follows:

> **Exclusive jurisdiction.** Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

Thus, for the Court to conclude Petitioner is not to be detained for purposes of executing a removal order not only violates 8 U.S.C. § 1252(g) but also goes against the balance *Zadvvdas* hoped to achieve: preserving the government's authority to effectuate removals while safeguarding the individual's interests against indefinite detention.

Moreso, Petitioner has failed to meet his burden that there is a substantial likelihood of removal in the reasonably foreseeable future. Petitioner directs this Court in his Memorandum of Law to consider *Popov v. Hardin*, No. 2:26-cv-00028-SPC-DNF, 2026 U.S. Dist. LEXIS 24720 (M.D. Fla. Feb. 6, 2026) and *Malikov v. Bondi*, No. 2:26-cv-00172-SPC-NPM, 2026 U.S. Dist. LEXIS 28895 (M.D. Fla. Feb. 12, 2026) for the proposition that removal to Russia is impossible. [DE 16, p. 5]. In *Popov*, the Court found that there was no significant likelihood of removal in the reasonably foreseeable future because ICE had been unable to execute the removal order for over a decade, there were no flights from the United States to Russia due to the ongoing war with Ukraine, and no third country for removal had been identified. 2026 U.S. Dist. LEXIS 24720, *6-

7. The reasoning in *Popov* is not binding on this Court. Additionally, the circumstances of each petitioner should be evaluated independently. Second, the *Malikov* decision involves a Russian petitioner, but the detention authority at issue in that case is 8 U.S.C. § 1225(b)(2) which is irrelevant to post-order detention under 8 U.S.C. § 1231. *See* 2026 U.S. Dist. LEXIS 28895, *2. Also, the *Malikov* court makes no mention of removal to Russia being impossible as Petitioner suggests. See [DE 16, p. 5] (incorrectly stating that the *Malikov* Court "granted habeas relief to a Russian citizen recognizing the severe geopolitical barriers preventing ICE from executing removals to the Russian Federation.").

As indicated in the Declaration of the Deportation Officer who has reviewed Petitioner's case, a travel document is currently pending, and charter/commercial flights to Russia are conducted to effectuate removals. *See* Ex. 6, Declaration, ¶¶ 16-17. While Petitioner would have this Court believe that the circumstances surrounding any attempt at removal years ago would control the "likelihood of removal in the reasonable foreseeable future" today, this analysis is faulty. *See Flores-Reyes v. Parra, et al.*, No. 26-cv-20226-RKA, DE 12 (S.D. Fla. Feb, 13, 2026)(explaining that "what was reasonably foreseeable in 2002 may well be markedly different from what's foreseeable today" when discussing an unsuccessful attempt to deport Petitioner almost two decades before the habeas petition filed based upon Petitioner's re-detention).

C. Respondents' Actions have not Violated the APA.

The Amended Petition makes no reference to the APA, but Petitioner's Memorandum of Law does state that agency action must be set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *See* [DE 16 p. 5]. Specifically, Petitioner characterizes his detention as an arbitrary exercise of power because his prior removal in 2012 was not successfully effectuated. [DE 16, p. 3]. Petitioner also states Respondents have failed to

comply with ICE directive 11002.1, which mandates an individualized determination for continued detention. *Id.* at p. 5.

As a preliminary matter, the APA does not provide jurisdiction to review where there is an alternative statutory remedy. "The APA only permits judicial review of an adverse agency decision where no other adequate remedy is available." *Hogan v. Kerry*, 208 F. Supp. 3d 1288, 1290 (S.D. Fla. 2016); *see* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review." (emphasis added)). Petitioner has sought relief through 28 U.S.C.§ 2241 which is an adequate remedy in light of the allegations of the Petition, hence an APA claim should not be considered.

Petitioner's detention for purposes of effectuating removal is authorized pursuant to 8 U.S.C. § 1231. During Petitioner's detention, he also received a custody review under to 8 C.F.R. § 241.4 as reflected in the Notice to Alien of File Custody Review served on January 7, 2026. *See* Ex. 6, Declaration, ¶ 14; Ex. 7, Notice to Alien of File Custody Review. On the same day, the Supervisory Detention and Deportation Officer concurred with the recommendation to continue detention. Ex. 6, Declaration, ¶ 14. On February 5, 2026, Petitioner was served with the Continued Detention Letter, advising him that he will remain in custody while his removal to Russia is effectuated. *See* Ex. 8, Continued Detention Letter. Petitioner did not request an interview at that time. *Id.* Overall, Respondents' actions do not exceed statutory or regulatory authority.

D. Petitioner's Due Process Rights have not been Violated.

As previously stated, detention is a constitutionally valid aspect of the deportation process. *Demore*, 538 U.S. at 523. An alien who has never been lawfully admitted to the United States "has only those rights regarding admission that Congress has provided by statute." *Dept. of*

Homeland Security v. Thuraissigiam, 591 U.S. 103, 138-40 (2020). Petitioner cannot establish any right to release under the current circumstances.

IV. CONCLUSION

Based upon the foregoing reasons, the Petition should be denied.

Dated: March 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being placed in the mail to Plaintiff at the address provided in the Service List below.

By: */s/ Jeanette M. Lugo*
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